

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 213

**Citations Affected:** IC 6-2.5.

**Synopsis:** State gross retail tax. Brings Indiana law into conformance with the requirements of the Streamlined Sales and Use Tax Agreement concerning: (1) the definition of tobacco; and (2) monetary allowances given to sellers and certified service providers for collecting sales and use taxes. Allows a partial sales tax exemption for a cargo trailer or a recreational vehicle and a full exemption for an aircraft purchased in Indiana, if it is to be titled or registered for use in another state. For cargo trailers and recreational vehicles, the exemption is equal to the sales tax imposed in Indiana minus the sales tax that would be imposed in the other state if the transaction had occurred in that state. Requires a retail merchant to maintain records substantiating the exemption. **(This conference committee report: (1) restricts the partial exemption for cargo trailers to trailers having a gross vehicle weight rating of at least 2,200 pounds; (2) restores provisions from the Senate passed version of the bill concerning the calculation of the partial exemptions and the procedures for obtaining and substantiating the exemptions; (3) removes provisions concerning the income of investment limited partnerships; and (4) removes an income tax deduction for using steel framing in new home construction.)**

**Effective:** July 1, 2005.

# CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 213 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-2.5-1-28 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]: **Sec. 28. "Tobacco" means cigarettes, cigars,**
- 5 **chewing or pipe tobacco, or any other item that contains tobacco.**
- 6 SECTION 2. IC 6-2.5-5-20 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Sales of food
- 8 and food ingredients for human consumption are exempt from the state
- 9 gross retail tax.
- 10 (b) For purposes of this section, the term "food and food ingredients
- 11 for human consumption" includes the following items if sold without
- 12 eating utensils provided by the seller:
- 13 (1) Food sold by a seller whose proper primary NAICS
- 14 classification is manufacturing in sector 311, except subsector 3118
- 15 (bakeries).
- 16 (2) Food sold in an unheated state by weight or volume as a single
- 17 item.
- 18 (3) Bakery items, including bread, rolls, buns, biscuits, bagels,
- 19 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
- 20 muffins, bars, cookies, and tortillas.
- 21 (c) Except as otherwise provided by subsection (b), for purposes of
- 22 this section, the term "food and food ingredients for human
- 23 consumption" does not include:

- (1) candy;
- (2) alcoholic beverages;
- (3) soft drinks;
- (4) food sold through a vending machine;
- (5) food sold in a heated state or heated by the seller;
- (6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); ~~or~~
- (7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); ~~or~~
- (8) tobacco.**

SECTION 3. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:**

- (1) without motive power;**
- (2) designed for carrying property;**
- (3) designed for being drawn by a motor vehicle; and**
- (4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.**

**(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.**

**(c) A transaction involving a cargo trailer, a recreational vehicle, or an aircraft is exempt from the state gross retail tax if:**

- (1) the purchaser is a nonresident;**
- (2) upon receiving delivery of the cargo trailer, recreational vehicle, or aircraft, the person transports it within thirty (30) days to a destination outside Indiana;**
- (3) the cargo trailer, recreational vehicle, or aircraft will be titled or registered for use in another state or country; and**
- (4) the cargo trailer, recreational vehicle, or aircraft will not be titled or registered for use in Indiana.**

**The amount of the exemption for a cargo trailer or recreational vehicle is determined in subsection (d).**

**(d) The amount of the exemption for a cargo trailer or a recreational vehicle under this section is equal to the amount of:**

- (1) the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana; minus**
- (2) the sales, use, or similar tax that would have been imposed on the transaction under the laws of the state or country in**

1       which the purchaser affirms the cargo trailer or recreational  
2       vehicle will be registered.

3       **The amount of the exemption under this section may not exceed the**  
4       **amount of the state gross retail tax that would be imposed on the**  
5       **transaction if the cargo trailer or recreational vehicle were**  
6       **registered in Indiana. A retail merchant that accepts an exemption**  
7       **claim for a cargo trailer or recreational vehicle under this section**  
8       **shall, within sixty (60) days after the date of the transaction, have**  
9       **on file a copy of the purchaser's title or registration of the cargo**  
10      **trailer or recreational vehicle outside Indiana or pay to the state**  
11      **the amount of the exemption.**

12      **(e) Any state gross retail tax due after the application of the**  
13      **exemption provided by this section must be paid to the retail**  
14      **merchant.**

15      **(f) A purchaser must claim an exemption under this section by**  
16      **submitting to the retail merchant an affidavit stating the**  
17      **purchaser's intent to:**

18          **(1) transport the cargo trailer, recreational vehicle, or aircraft**  
19          **to a destination outside Indiana within thirty (30) days after**  
20          **delivery; and**

21          **(2) title or register the cargo trailer, recreational vehicle, or**  
22          **aircraft for use in another state or country.**

23      **The department shall prescribe the form of the affidavit. The**  
24      **affidavit must identify the state or country in which the cargo**  
25      **trailer, recreational vehicle, or aircraft will be titled or registered.**  
26      **Within sixty (60) days after the date of the transaction, the**  
27      **purchaser shall provide to the retail merchant a copy of the**  
28      **purchaser's title or registration of the cargo trailer, recreational**  
29      **vehicle, or aircraft outside Indiana.**

30      **(g) The department shall provide the information necessary to**  
31      **calculate the amount of an exemption claimed under this section to**  
32      **retail merchants in the business of selling cargo trailers or**  
33      **recreational vehicles.**

34      **SECTION 4. IC 6-2.5-11-10 IS AMENDED TO READ AS**  
35      **FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A certified**  
36      **service provider is the agent of a seller, with whom the certified service**  
37      **provider has contracted, for the collection and remittance of sales and**  
38      **use taxes. As the seller's agent, the certified service provider is liable**  
39      **for sales and use tax due each member state on all sales transactions it**  
40      **processes for the seller except as set out in this section. A seller that**  
41      **contracts with a certified service provider is not liable to the state for**  
42      **sales or use tax due on transactions processed by the certified service**  
43      **provider unless the seller misrepresented the type of items it sells or**  
44      **committed fraud. In the absence of probable cause to believe that the**  
45      **seller has committed fraud or made a material misrepresentation, the**  
46      **seller is not subject to audit on the transactions processed by the**  
47      **certified service provider. A seller is subject to audit for transactions**  
48      **not processed by the certified service provider. The member states**  
49      **acting jointly may perform a system check of the seller and review the**  
50      **seller's procedures to determine if the certified service provider's system**  
51      **is functioning properly and the extent to which the seller's transactions**

1 are being processed by the certified service provider.

2 (b) A person that provides a certified automated system is responsible  
3 for the proper functioning of that system and is liable to the state for  
4 underpayments of tax attributable to errors in the functioning of the  
5 certified automated system. A seller that uses a certified automated  
6 system remains responsible and is liable to the state for reporting and  
7 remitting tax.

8 (c) A seller that has a proprietary system for determining the amount  
9 of tax due on transactions and has signed an agreement establishing a  
10 performance standard for that system is liable for the failure of the  
11 system to meet the performance standard.

12 **(d) The department shall allow any monetary allowances that are**  
13 **provided by the member states to sellers or certified service**  
14 **providers in exchange for collecting the sales and use taxes as**  
15 **provided in article VI of the agreement.**

16 SECTION 5. [EFFECTIVE JULY 1, 2005] **IC 6-2.5-5-39, as added**  
17 **by this act, applies to transactions occurring after June 30, 2005.**

(Reference is to ESB 213 as reprinted March 25, 2005.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 213**

**S**igned by:

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Senator Young R Michael  
Chairperson

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Representative Walorski

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Senator Hume

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Representative Aguilera

**Senate Conferees**

**House Conferees**